

JOHN F. JACOBS

IBLA 81-830

Decided August 16, 1982

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease application W 74992.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing, respectively, with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3, and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

2. Oil and Gas Leases: Generally--Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: First-Qualified Applicant

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of applicants receiving second and third priority have intervened. The Department is authorized to accept only the offer of the first qualified applicant, one who has fully complied with all the regulations.

APPEARANCES: John F. Jacobs, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

John F. Jacobs appeals from the June 17, 1981, decision of the Wyoming State Office, Bureau of Land Management (BLM), which rejected his noncompetitive simultaneous oil and gas lease application, W-74992. The application was rejected for failure to comply with 43 CFR 3112.2-1. Appellant failed to respond to questions (d), (e), and (f) on the reverse side of his simultaneous lease application. This portion of the application appears as follows:

UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes) [original in italics]:

* * * * *

(d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application or the offer or lease which may result? Yes No

(e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest? Yes No

(f) Does the undersigned have any interest in any other application filed for the same parcel as this application? Yes No

There is also a space provided on the form for an applicant to name any other parties in interest.

On appeal appellant responds to questions (d), (e), and (f), answering "No" in each case, and requests that the Board uphold his appeal since his omissions were the result of an honest mistake.

[1] Questions (d) through (f) are included in a list of affirmative statements (to which applicant must certify) and questions which applicant must answer on the application form dealing with the applicant's qualifications to hold a lease. The answers to the questions relate directly to the qualifications of the applicant to receive a lease. The failure to disclose a party in interest to the lease application (question (d)) is a violation of the regulation at 43 CFR 3102.2-7 (1981), the assignment of an interest in the lease application (question (e)) prior to lease issuance or lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3, and any interest of the applicant in more than one application for the same parcel (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c). Although the Secretary of the Interior has discretion whether to issue an oil and gas lease for lands not within a known geological structure of a

producing oil or gas field, he is required by statute, 30 U.S.C. § 226(c) (1976), to issue the lease to the first qualified applicant therefor. Udall v. Tallman, 380 U.S. 1, 4 (1965). The Secretary is entitled to require such information as is necessary to ensure that an applicant for a lease is qualified. See Ken Wiley, 54 IBLA 367 (1981). The questions on the application form serve that purpose. The failure of the applicant to check an answer to each question creates a serious defect in the certification required by the application. Bonita L. Ferguson, 61 IBLA 178 (1982); Jake Huebert, 59 IBLA 179 (1981).

[2] Appellant's defective simultaneous lease application cannot be cured on appeal. A defective application for a noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence after the drawing for the reason that the rights of the applicants receiving second and third priority have intervened. Stephen A. Pitt, 57 IBLA 365 (1981); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). The Department is authorized to accept only the offer of the first qualified applicant, one who has fully complied with all mandatory regulations. Harry A. Zuckerman, 41 IBLA 372 (1979); see Sorensen v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

